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FM AMEMBASSY HARARE

TO RUEHC/SECSTATE WASHDC IMMEDIATE 4442  
INFO RUCNSAD/SOUTHERN AF DEVELOPMENT COMMUNITY COLLECTIVE  
RUEHAR/AMEMBASSY ACCRA 2801  
RUEHDS/AMEMBASSY ADDIS ABABA 2922  
RUEHRL/AMEMBASSY BERLIN 1365  
RUEHBY/AMEMBASSY CANBERRA 2185  
RUEHDK/AMEMBASSY DAKAR 2550  
RUEHKM/AMEMBASSY KAMPALA 2970  
RUEHNR/AMEMBASSY NAIROBI 5411  
RUEAIIA/CIA WASHDC  
RUZEJAA/JAC MOLESWORTH RAF MOLESWORTH UK  
RHMFIS/EUCOM POLAD VAIHINGEN GE  
RHEFDIA/DIA WASHDC  
RUEHGV/USMISSION GENEVA 2094  
RHEHAAA/NSC WASHDC

C O N F I D E N T I A L SECTION 01 OF 02 HARARE 000367

SIPDIS

AF/S FOR B. WALCH  
DRL FOR N. WILETT  
ADDIS ABABA FOR USAU  
ADDIS ABABA FOR ACSS  
STATE PASS TO NSC FOR SENIOR AFRICA DIRECTOR

E.O. 12958: DECL: 05/05/2019  
TAGS: [ASEC](#) [KDEM](#) [PGOV](#) [PHUM](#) [PREL](#) [ZI](#)  
SUBJECT: DRAMATIC SETBACK: ZIM ABDUCTEES SENT BACK TO JAIL

REF: A. HARARE 332  
    [1](#)B. HARARE 283  
    [1](#)C. HARARE 218  
    [1](#)D. HARARE 29

Classified By: Charge d'Affaires Katherine Dhanani for reason 1.4 (d).

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SUMMARY  
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[11.](#) (C) On May 5, Magistrate Catherine Chimwanda remanded 15 individuals, including prominent human rights activist Jestina Mukoko, to prison pending their trials, which are currently scheduled for June and July 2009. Mukoko and others were abducted between October and December 2008, tortured, accused of crimes including terrorism, and were subsequently released over a period of several months. On May 4, the Attorney General's office formally charged the 15 and asked the court to revoke bail previously granted, in contravention of the political agreement between the three major political parties, Attorney General Johannes Tomana, and the Joint Monitoring and Implementation Committee (JOMIC) that secured their release within the last several months. Defense lawyers believed the abductees' remand was ordered by Tomana in an attempt to undermine the transitional government. END SUMMARY.

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Formal Charges Lead to Bail Revocation  
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[12.](#) (U) During a routine remand hearing on May 4, 15 individuals previously abducted and detained (ref D) -- and released on bail during the last several months -- were indicted for various crimes, including recruiting armed insurgents and bombing police stations. (NOTE: Contrary to press reports, Zimbabwe Lawyers for Human Rights informed us that the number of individuals in question was 15 rather than 18 as reported in the news media. END NOTE.) During the proceeding, Magistrate Catherine Chimwanda heard arguments from the Attorney General's office to revoke bail of all 15

individuals. (NOTE: Under normal court procedure in Zimbabwe, bail is automatically revoked upon indictment, and defendants must re-apply for bail. END NOTE.) Defense attorneys for Mukoko and the others argued that their clients had been released on bail as a result of a political agreement between the Attorney General's office and JOMIC with the understanding they would remain at liberty until the conclusion of their trials. Defense lawyers had previously confirmed this arrangement verbally with Mr. Tokwe of the Attorney General's office and asked for time to present witnesses from JOMIC and Mr. Tokwe to testify to the arrangement. Magistrate Chimwanda agreed to continue the hearing to May 5.

¶3. (U) On May 5, Magistrate Chimwanda ruled that she did not have the jurisdiction to consider the issue of bail and that the case should be referred to the High Court. She also refused to postpone the hearing, as she had indicated on May 4 she would do, to allow Mr. Tokwe or members of JOMIC to testify. (NOTE: No one from JOMIC was present, as its members were either in the weekly Cabinet meeting or out of the country. END NOTE.) She read a carefully worded statement that she had the jurisdiction to detain the group in state custody until their trial dates in June and July (ref A). Immediately after reading her decision, police escorted the 12 detainees present to the court's holding cells. Three of the accused, journalist Shadreck Manyere, Chris Dlamini and Ghandi Mudzingwa, remain in Avenues Clinic where they continue to receive care for injuries sustained during their detention.

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¶4. (C) Lawyers familiar with Chimwanda said she is normally a balanced and fair magistrate, but she did "not appear to be herself," according to lawyer Beatrice Mtetwa. Another lawyer, Otto Saki, told us that May 5's short proceeding and the script she read were highly unusual; he did not believe she had written the judgment herself.

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"Agreement will not work as long as Tomana is AG"  
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¶5. (C) Before the hearing on May 5, Mtetwa told us that Tomana continues to pursue cases against Deputy Prime Minister Arthur Mutambara, Constitution and Parliamentary Affairs Minister Eric Matinenga, and other MDC leaders. Mtetwa believes the Attorney General is using his position to erode the rule of law and to politicize certain cases, like Mukoko's. Mtetwa informed us that a contact in the AG's office told her yesterday that Tomana continues to pursue a contempt of court case against her, following her involvement in defending Roy Bennett, the MDC nominee for Deputy Agriculture Minister (ref C). Mtetwa and other lawyers are increasingly pessimistic about Zimbabwe's immediate political future. Mtetwa opined the "agreement will not work as long as Tomana is Attorney General."

¶6. (SBU) The detainees' lawyers filed bail applications in the High Court on May 5, which are scheduled to be heard on May 7.

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Media Conference Postponed  
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¶7. (U) The Media Alliance of Zimbabwe (MAZ), a consortium of media-related civil society organizations, issued a press release announcing its members are pulling out of the May 6-9 All Stakeholders Media Conference scheduled to take place in Kariba. MAZ based its decision on the court proceedings and re-detention of Mukoko and Manyere, which it described as "an apparent abuse of the judicial process which undermines the spirit and letter of the Global Political Agreement." With

the boycott of important civil society groups, Deputy Minister of Information Jameson Timba (MDC-M) announced today that he will postpone the conference.

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COMMENT  
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¶8. (C) Attorney General Tomana, under the Zimbabwean constitution, enjoys an independent status that makes his removal, except on grounds of malfeasance, all but impossible. The Attorney General's action in these cases demonstrates that his continued presence as Attorney General is a major obstacle to reestablishment of the rule of law and to efforts to build trust or begin reconciliation between ZANU-PF, its partners in government and civil society. END COMMENT.

DHANANI